

1 AN ACT relating to soil conservation and making an appropriation therefor.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) The Division of Conservation, with the advice and input of the Department of*
6 *Agriculture, shall establish and implement the Healthy Soils Program in order to*
7 *promote the use of healthy soil practices by Kentucky's farmers, both urban and*
8 *rural. The division shall:*

9 *(a) Provide technical advice and assistance on healthy soil practices;*

10 *(b) Assist farmers with soil health assessments; and*

11 *(c) Aid farmers with the development and implementation of soil health plans.*

12 *(2) The commissioner of the Department for Natural Resources shall approve grants,*
13 *made on a competitive basis, and other types of financial incentives to local*
14 *governments, schools, and public, private, and charitable entities to finance*
15 *projects in furtherance of the Healthy Soils Program. Part of promoting healthy*
16 *soil practices shall be the efficient application of chemicals and amendments on*
17 *agricultural and nonagricultural land. The commissioner shall develop a low-*
18 *cost loan program for Kentucky farmers to adopt and implement a soil health*
19 *plan. Priority for financial assistance shall be given to veteran farmers or*
20 *ranchers, beginning farmers or ranchers, and socially disadvantaged farmers or*
21 *ranchers, as those terms are defined in 7 U.S.C. sec. 2279(a).*

22 *(3) Expenditures from the Healthy Soils Program fund established in Section 2 of*
23 *this Act shall be used for the purposes of this section to complement rather than*
24 *replace existing local, state, private, or federal funding for related programs. The*
25 *department may enter into agreements with other state and federal agencies to*
26 *implement the Healthy Soils Program.*

27 *(4) The Department for Natural Resources shall promulgate administrative*

1 regulations to implement the Healthy Soils Program pursuant to this section and
2 administer the Healthy Soils Program fund pursuant to Section 2 of this Act.

3 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) The Healthy Soils Program fund is hereby created and established in the State
6 Treasury as a separate trust and agency account. The fund shall be used for
7 running the Healthy Soils Program, making grants and loans, and offering other
8 financial incentives in support of Section 1 of this Act. The fund may receive
9 appropriations from the General Assembly, grants, gifts, federal funds, or any
10 other funds, both public and private, for the purpose of supporting and abetting
11 the Healthy Soils Program.

12 (2) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of
13 the fiscal year shall not lapse but shall be carried forward to the next fiscal year.
14 Any unallotted or unencumbered balance shall be carried forward. Funds shall
15 be invested pursuant to KRS 42.500 and any income earned from the investments
16 shall be credited to and become part of the fund.

17 (3) Disbursements from the fund shall be made by the Treasurer upon writ from the
18 commissioner of the Department for Natural Resources.

19 ➔Section 3. KRS 146.100 is amended to read as follows:

20 (1) The secretary of the Energy and Environment Cabinet, with the approval of the Soil
21 and Water Conservation Commission, shall appoint a director of the Division of
22 Conservation with experience in professional agricultural activities, including
23 healthy soil practices as defined in Section 5 of this Act, and who shall serve as
24 executive officer for the commission. The director shall serve at the will of, and
25 receive compensation as may be determined by the secretary of the Energy and
26 Environment Cabinet with the advice of the Soil and Water Conservation
27 Commission. In addition to any other duties assigned to him or her by the secretary

1 of the Energy and Environment Cabinet, the director shall exercise, subject to the
2 approval of the secretary, general administrative supervision over all activities,
3 employees and property of the commission.~~[;]~~

4 (2) The secretary of the Energy and Environment Cabinet may employ other officers,
5 employees, and agents, who shall serve at his or her will as he or she deems
6 necessary, with the advice of the Soil and Water Conservation Commission, and
7 shall provide for surety bonds for members, the director, officers, employees or
8 agents if entrusted with funds or property.

9 ➔Section 4. KRS 224.71-110 is amended to read as follows:

10 (1) The Agriculture Water Quality Authority is created and administratively attached to
11 the cabinet. The authority shall be a multidiscipline peer group that shall evaluate,
12 develop, and improve best-management practices in conservation plans, compliance
13 plans, and forest stewardship management plans; establish statewide and regional
14 agriculture water quality plans; and otherwise promote soil and water conservation
15 **and restoration** activities that protect waters of the Commonwealth from the
16 adverse impacts of agriculture operations within the Commonwealth. The cabinet
17 shall provide staff to the authority.

18 (2) ~~[Within six (6) months of July 15, 1994,]~~The Soil and Water Conservation
19 Commission shall submit to the Governor for appointment to the Agriculture Water
20 Quality Authority a list of three (3) persons recommended by each of the following
21 state agencies and organizations:

- 22 (a) Kentucky Association of Conservation Districts;
- 23 (b) Kentucky Department of Agriculture;
- 24 (c) University of Kentucky College of Agriculture Cooperative Extension
25 Service;
- 26 (d) Kentucky Farm Bureau Federation, Inc.;
- 27 (e) Division of Conservation, Energy and Environment Cabinet;

1 (f) Division of Forestry, Energy and Environment Cabinet;

2 (g) Kentucky Geological Survey; ~~and~~

3 (h) Environmental organizations; and

4 (i) Organic agriculture organizations.

5 The membership of the Agriculture Water Quality Authority appointed by the
6 Governor shall consist of one (1) representative from each of the groups identified
7 in paragraphs (a) to ~~(i)(h)~~ of this subsection and two (2)~~three (3)~~ members at
8 large from agriculture operations. The Soil and Water Conservation Commission
9 shall solicit nominations from Kentucky agriculture operations organizations and
10 submit those names to the Governor for selection of the two (2)~~three (3)~~ members
11 at large from agriculture operations. Initial terms shall be staggered, and~~The~~
12 ~~Governor shall select four (4) members to serve two (2) year initial terms, four (4)~~
13 ~~members to serve three (3) year initial terms, and three (3) members to serve four~~
14 ~~(4) year initial terms.]~~ all succeeding terms shall be four (4) year terms. Vacancies
15 shall be filled in the same manner as the original appointments. A representative
16 from the Natural Resources Conservation Service and a representative from the
17 United States Department of Agriculture Farm Service Agency may also be
18 appointed by the Governor to serve on the authority. One (1) representative each
19 from the Division of Water, Energy and Environment Cabinet and the Department
20 for Public Health, Cabinet for Health and Family Services shall serve as ex officio
21 members.

22 (3) It shall be the responsibility of the Agriculture Water Quality Authority to establish,
23 at a minimum, the following five (5)~~four (4)~~ committees for agriculture
24 operations, with membership outside the Agriculture Water Quality Authority:

25 (a) Livestock and poultry;

26 (b) Crops, including but not limited to tobacco, corn, soybeans, small grains,
27 fruits and vegetables, pasture and timber;

- 1 (c) Pesticides, fertilizers, and other agricultural chemicals; ~~and~~
- 2 (d) Farmstead issues; and
- 3 (e) *Healthy soil practices as defined in Section 5 of this Act.*
- 4 (4) The Agriculture Water Quality Authority shall have the following responsibilities:
- 5 (a) Review water quality data as available;
- 6 (b) Review university research on water quality and alternative best-management
- 7 practices research;
- 8 (c) Evaluate the adoption and effectiveness of best-management practices, and
- 9 modify best-management practice design standards to improve water quality
- 10 protection practices;
- 11 (d) Develop by July 1, 1996, statewide agriculture water quality plans to address
- 12 identifiable water pollution problems from agriculture operations, and
- 13 continue to evaluate and modify the agriculture water quality plans, as
- 14 necessary to prevent water pollution from agriculture operations;
- 15 (e) Assist with the review of state-funded and other water quality monitoring data
- 16 and with the establishment of agriculture water priority protection regions;
- 17 (f) Provide technical assistance to persons engaged in agriculture operations and
- 18 to the Soil and Water Conservation Commission in its efforts to coordinate
- 19 water quality protection as related to agriculture operations;
- 20 (g) Work with the Natural Resources Conservation Service, United States
- 21 Department of Agriculture Farm Service Agency, and conservation districts to
- 22 disseminate to agriculture operations the best-management practices,
- 23 conservation plans, compliance plans, forest stewardship management plans,
- 24 and agriculture water quality plans which address the protection of
- 25 groundwater and surface water;
- 26 (h) Provide the Governor and the Legislative Research Commission with biennial
- 27 reports of the progress of the Agriculture Water Quality Authority program;

1 and

2 (i) Establish procedures for modifications to be incorporated into statewide or
3 regional agriculture water quality plans.

4 (5) The cabinet's Division of Water shall approve or disapprove any statewide and
5 regional water quality plan within thirty (30) days of receiving the plan from the
6 Agriculture Water Quality Authority. All provisions of a statewide or regional water
7 quality plan not found deficient shall be approved. If the Division of Water finds
8 any provision of the statewide or regional agriculture water quality plan deficient,
9 the Division of Water shall give written notice to the authority of those provisions
10 found to be deficient. Within the thirty (30) days following the notice of deficiency,
11 the authority shall deliver to the Division of Water a written response setting forth
12 proposed solutions to the deficiencies. Any deficiencies which remain unresolved
13 shall be resolved in a manner agreed to jointly by the Division of Water and the
14 authority within sixty (60) days unless the Division of Water and authority jointly
15 agree to an extension or alternate dispute resolution. The Division of Water shall
16 approve or disapprove all modifications to the statewide and regional plans as set
17 forth at KRS 224.71-120(8).

18 ➔Section 5. KRS 262.010 is amended to read as follows:

19 (1) "Board" means the board of supervisors of a conservation district;

20 (2) "Commission" means the Conservation Commission;

21 (3) "District" means a conservation district whenever used in KRS 262.010 to 262.660
22 or a watershed conservancy district whenever used in KRS 262.700 to 262.795;

23 (4) "Due notice" means notice published in accordance with the legal notice provisions
24 of KRS Chapter 424;

25 (5) **"Healthy soil practices" means agricultural practices supported by the United**
26 **States Department of Agriculture Natural Resources Conservation Service's**
27 **Environmental Quality Incentives Program that feed the soil, reduce erosion,**

1 *improve soil structure, enhance nutrient cycling, and encourage water retention*

2 *by utilizing four (4) principal practices as follows:*

3 *(a) Using plant diversity to improve diversity in the soil;*

4 *(b) Managing soils with less disturbance to the soil;*

5 *(c) Keeping plants growing year-round to feed the soil; and*

6 *(d) Keeping the soil covered as much as possible;*

7 **(6)** "Infrastructure" means the plant and assets required for maintaining a district office;

8 ~~**(7)**~~ "Land occupier" or "occupier of land" includes any person other than the
9 landowner who is in possession of any lands lying within the district, whether as
10 lessee or otherwise;

11 ~~**(8)**~~ "Landowner" or "owner of land" includes any person who holds legal or
12 equitable title to the land within the district determined as follows:

13 (a) By his, her, or their names appearing on the recorded deed to the land;

14 (b) By title derived through a probated will or by the laws of descent and
15 distribution under KRS Chapter 391;

16 (c) Where a minor or person adjudged mentally disabled is the owner of land
17 within the district, the guardian or conservator or whoever has the power of
18 attorney shall have the right to vote for such landowner under the provisions
19 of KRS Chapter 262;

20 (d) Where the will has not been probated by the date of the referendum or election
21 as provided in KRS Chapter 262, the executor of the deceased landowner shall
22 have the right to vote for the devisee or devisees;

23 (e) Where the land within the districts is held in trust, the trustee shall have the
24 right to vote for the landowner under the provisions of KRS Chapter 262;

25 (f) A landowner shall be entitled to but one (1) vote whenever he is given the
26 right to vote under KRS Chapter 262 regardless of the number of tracts or
27 parcels of land which he owns either wholly or in part, within the district;

1 (g) Where a trustee, executor, guardian, conservator, or other person with
 2 authority to vote for a landowner exercises such duty in relation to two (2) or
 3 more estates or tracts of land, within a district, such person shall have the right
 4 to vote separately for each such landowner which he represents within the
 5 district; or

6 (h) In the case of a dispute as to whether or not a person has the right to vote in an
 7 election or referendum under the provisions of KRS Chapter 262, the person
 8 seeking such right must provide to the satisfaction of the polling
 9 superintendent that he has the right to vote under this section;

10 (9) "Soil health" means the overall composition of the soil and its continued
 11 capacity to function as a vital living ecosystem that sustains plants, animals, and
 12 humans;

13 (10) "Soil health assessment" means a suite of soil health indicator measures such as
 14 amount of organic matter in the soil, soil structure, infiltration and bulk density,
 15 water holding capacity, microbial biomass, and soil respiration;~~[-]~~

16 (11)~~[(8)]~~ "Supervisor" means one (1) of the members of the governing body of a
 17 conservation district; and

18 (12) "Watershed health" means the continued capacity of surface water and
 19 groundwater ecosystems to function as a vital living ecosystem that is resilient to
 20 drought and storm events and that sustains plants, animals, and humans.

21 ➔Section 6. KRS 262.020 is amended to read as follows:

22 The purpose of a soil and water conservation district is to conserve, restore, and develop
 23 all renewable natural resources within the district. In so doing, the district is authorized to
 24 undertake, sponsor, or participate in projects and activities which promote the health,
 25 conservation, restoration, development, maintenance and use of the land, water, trees and
 26 other renewable natural resources of the district. Such projects and activities shall include
 27 ~~but not be limited to~~ conservation and healthy soil practices on agricultural lands, the

1 control of soil erosion, retardation of water runoff, the construction of flood prevention
2 and control reservoirs, the maintenance of flood plains, the promotion of projects to
3 ensure~~assure~~ an adequate municipal, industrial and agricultural supply of water,
4 watershed stabilization, the avoidance and abatement of sedimentation and pollution in
5 streams and other bodies of water, forestation and reforestation, the establishment of
6 parks and outdoor recreation areas, the protection of open space, greenbelt areas and
7 scenery, the preservation of wilderness areas, the protection of fish and wildlife, the
8 protection and restoration of soil and watershed health and biological diversity,
9 assisting rural and urban agricultural producers in soil health assessments and in
10 developing soil health plans, working for the location of highways, industries, housing
11 developments, airports and other structures as are consistent with the district's objectives
12 and will offer the least possible interference with the conservation and best multiple use
13 of the renewable natural resources, and all other activities consistent with the total natural
14 resources development of the district.

15 ➔Section 7. KRS 262.748 is amended to read as follows:

16 (1) Upon determination by the board of directors of a watershed conservancy district
17 that the improvement, continuing operation, or maintenance of a watershed project
18 is necessary, the board of directors may adopt a resolution which shall set out:

19 (a) A list of the benefited lands located in the flood plain, as determined by the
20 board of directors, giving the acreage of such lands and the names of the
21 landowners~~owners~~ thereof as defined by KRS 262.010~~{(7)}~~ with a
22 classification of such lands or parts thereof into classes in order that
23 assessments may be made according to direct benefits; and

24 (b) The annual assessments to be levied upon the lands set out in the resolution on
25 the basis of a certain amount per acre according to benefits received, not to
26 exceed in any one (1) year a sum per acre specified in the resolution.

27 (2) The board of directors shall cause due notice of the resolution to be given to all the

1 owners of benefited lands, as determined by the board. Said notice shall set out the
2 time and place of a meeting of the board of directors of the watershed conservancy
3 district at which owners of benefited lands who may be liable for the annual
4 assessments may be heard.

5 (3) At the hearing upon the resolution, owners of benefited lands may voice their views
6 concerning the proposal as to whether it should be undertaken, and the scope
7 thereof, or the degree of benefit received by their lands. The board shall prepare a
8 record summarizing the proceedings. If the board of directors determines as a result
9 of the hearing that the proposal should be carried out as planned, it may make such
10 changes or revisions in the resolution as it deems proper and shall give due notice of
11 an election to be held at which benefited landowners may vote on the question of
12 annual special assessments to defray the cost. The notice of the election shall
13 include the text of the resolution of the board in its final form. The board of
14 directors may give due notice as provided in KRS 262.010(4).

15 (4) The board of directors shall prepare the following question to be presented to the
16 voters: "Should the assessment for improvement, continuing operation, or
17 maintenance proposed by resolution of the..... Watershed Conservancy District be
18 adopted?" Voters shall be instructed to vote "yes" or "no" on the proposition. Only
19 owners of benefited land as set out in the resolution shall be eligible to vote. The
20 board of directors may provide for a meeting of the landowners at which the vote
21 may be cast, in which case qualified voters may vote by absentee vote. The board
22 shall appoint a polling superintendent and other necessary election officers, giving
23 representation to the opponents of the question as well as to proponents.

24 (5) If a majority of those voting upon the proposition favor the assessment the board
25 shall give due notice of the vote. Any owner of property to be benefited by the
26 project may, within forty (40) days after publication of such notice, file an action in
27 the Circuit Court of the county in which his lands are located seeking relief by

1 declaratory judgment or injunction. If a suit is filed, the county attorney shall
2 represent the board of directors in upholding the validity of the proposed
3 assessment. After the lapse of time specified herein all actions by owners of
4 properties to be benefited shall be forever barred.

5 (6) If no suit is filed and no injunction issued within the time allowed in subsection (5)
6 of this section, the board of directors shall levy annual assessments effective only
7 upon the benefited properties and based on the acreage thereof. The annual
8 assessment shall be made by the board of directors at the same time and in the same
9 manner as provided in KRS 262.765 for taxes generally and shall be collected as
10 provided in KRS 262.770. The assessments shall constitute liens against the land
11 benefited and shall attach to the land, taking precedence over all other liens except
12 state, county and municipal taxes and prior improvement assessments.

13 ➔Section 8. KRS 262.778 is amended to read as follows:

14 (1) Upon determination by the board of directors of a watershed conservancy district
15 that a watershed project is necessary, and upon approval of the plans for same by
16 the board of supervisors, the board of directors shall adopt a resolution which shall
17 set out:

18 (a) A description of the project in general terms;

19 (b) A list of the benefited lands located in the flood plain, as determined by the
20 board of directors, giving the acreage of such lands and the names of the
21 landowners~~owners~~ thereof as defined by KRS 262.010~~{(7)}~~ with a
22 classification of such lands or parts thereof into classes in order that
23 assessments may be made according to direct benefits;

24 (c) The total cost of the project; and

25 (d) The fact that the cost shall be met by a bond issue payable solely from annual
26 assessments to be levied upon the lands set out in the resolution on the basis
27 of a certain amount per acre according to benefits received, not to exceed in

1 any one (1) year a sum per acre specified in the resolution, with the annual
2 assessments to extend over a period of years specified in the resolution not to
3 exceed thirty (30) years.

4 (2) The board of directors shall cause due notice of the resolution to be given to all the
5 owners of benefited lands, as determined by the board. Said notice shall set out the
6 time and place of a meeting of the board of directors of the watershed conservancy
7 district at which owners of benefited lands who may be liable for the annual
8 assessments may be heard.

9 (3) At the hearing upon the resolution, owners of benefited lands may voice their views
10 concerning the proposed project as to whether said project should be undertaken,
11 and the scope thereof, or the propriety of placing their lands in the project area or
12 the degree of benefit received by their lands. The board shall prepare a record
13 summarizing the proceedings. If the board of directors determines as a result of the
14 hearing that the project should be carried out as planned, it may make such changes
15 or revisions in the resolution as it deems proper and shall give due notice of an
16 election to be held at which benefited landowners may vote on the question of
17 annual special assessments to defray the cost of the project. The notice of the
18 election shall include the text of the resolution of the board in its final form. The
19 board of directors may give due notice as provided in KRS 262.010(4).

20 (4) The board of directors shall prepare to be presented to the voters the question:
21 "Should the assessment proposed by resolution of the Watershed Conservancy
22 District be adopted?". Voters shall be instructed to vote "yes" or "no." Only owners
23 of benefited land as set out in the resolution shall be eligible to vote. The board of
24 directors may provide for a meeting of the landowners at which the vote may be
25 cast, in which case qualified voters may vote by absentee vote. The board shall
26 appoint a polling superintendent and other necessary election officers, giving
27 representation to the opponents of the question as well as to proponents.

- 1 (5) If a majority of those voting upon the proposition favor the assessment, the board
2 shall give due notice of the vote and the fact that bonds will forthwith be issued
3 payable from special assessments. Any owner of property to be benefited by the
4 project may, within forty (40) days after publication of such notice, file an action in
5 the Circuit Court of the county in which his lands are located seeking relief by
6 declaratory judgment or injunction. If a suit is filed, the county attorney should
7 represent the board of directors in upholding the validity of the proposed bond
8 issue. After the lapse of time specified herein, all actions by owners of properties to
9 be benefited shall be forever barred.
- 10 (6) If no suit is filed and no injunction issued within the time allowed in subsection (5)
11 of this section, the board of directors shall by resolution authorize the issuance of
12 bonds designated "watershed project assessment bonds," determining the principal
13 amount thereof and establishing the denominations and maturity dates thereof and
14 shall levy an annual assessment effective only upon the benefited properties and
15 based on the acreage thereof. The annual rate of such assessments shall be fixed
16 when other taxes of the district are levied and shall be sufficient in each year to
17 provide for the payment of such bonds and interest coupons as they mature and
18 sufficient to provide a fund equal to twenty percent (20%) of the average annual
19 principal and interest requirements, the same to constitute a "debt service reserve"
20 as a precaution against possible default by failure to collect annual levies. The
21 bonds shall state on their face that they do not constitute a debt of the district but are
22 payable solely from collection of special assessments made upon benefited lands
23 lying in the watershed conservancy district.